IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

SA.No. 235 of 1993()

AS.124/1989 of SUB COURT, PAYYANNUR
OS.173/1980 of MUNSIFF COURT, PAYYANNUR
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APPELLANT:APPELLANT:PLAINTIFF

CHEROOTTA RAMAN, SON OF CHANDRAN,
AGRICULTURIST RESIDING AT PERINGOME AMSOM
THAVIDISSERI DESOM.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS:

POTTAKKULATH KRISHNAN, SON OF APPU,
AGRICULTURIST, RESIDING AT PERINGOME
AMSOM THAVIDISSERI DESOM.

BY ADV. SRI P.KRISHAN(PARTY)
SRI.A.MOHAMED MUSTAQUE
SRI.SHEJI P.ABRAHAM
SRI P.V.RAMESH SHANKER

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 13 /3 /2007 THE COURT ON 13/03/2007 DELIVERED THE
FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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S.A. NO. 235 OF 1993

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Dated this the 13th day of March 2007

JUDGMENT

Plaintiff in O.S.173/80 on the file of Munsiff Court, Payyannur is the appellant. Defendant is the respondent. Suit was filed seeking a decree for permanent prohibitory injunction restraining respondent from trespassing into plaint schedule property. According to appellant, the property was obtained on oral lease from Raja Ramavarma Valiya Raja of Chirakkal Kovilakam and later a purchase certificate was obtained from the Land Tribunal and on 5.10.1980 respondent attempted to trespass into the plaint schedule property and he has no right to do so and therefore appellant is entitled to a decree for permanent prohibitory injunction. Respondent filed a written statement contending that plaint schedule property was obtained on oral lease from Kuttoor Vengayil tarwad which in turn had obtained the property from Chirakkal Kovilakam

on kuzhikanam right. Thereafter respondent obtained purchase certificate from the Land Tribunal and mortgaged the property to Cannanore Co-operative Land Mortgage Bank and plaint schedule property cannot be identified on the descriptions given. Learned Munsiff framed necessary issues. On the evidence of DW1 and Exts.A1 to A13, Ext.B1 to B14 and C1 and C2 holding that plaint schedule property could not be identified by the Commissioner and appellant did not establish his possession, suit was dismissed. It was challenged before Sub Court, Payyannur in A.S.124/89. Before first Appellate Court it was contended that learned Munsiff should have allowed I.A.172/89 an application filed for amending the plaint to convert the suit for recovery of possession and therefore the decree and judgment passed by learned Munsiff are to be set aside. Learned Sub Judge dismissed the appeal confirming the decree and judgment passed by learned Munsiff. It is challenged in the Second Appeal.

2. Learned counsel appearing for appellant was heard. Learned counsel appearing for appellant submitted that the appellant may be permitted to file a suit for recovery possession on the strength of title and the dismissal of the suit may not prevent appellant from seeking a decree for recovery of possession on the strength of title.

3. The suit was filed only for injunction. Though appellant tried to amend the plaint to convert the suit into recovery of possession, that was not allowed. Learned Munsiff found that the identity of the plaint schedule property was not established and court fee was not paid under section 27(a) of Kerala Court Fees and Suit Valuation Act and so question of title is not decided in the suit. In such circumstance, dismissal of the suit as confirmed by learned Sub Judge will not prevent appellant from instituting a suit for recovery possession on the strength of title. As the evidence do not establish either the identity of the plaint schedule property or its

possession by appellants courts below dismissed the suit. No substantial question of law is involved in the appeal. Hence appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

S.A..NO.235 /1993

JUDGMENT

13TH MARCH, 2007